IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application. No:	10/662,936	Examiner:	To, Jennifer N.
Filed:	September 15, 2003	Group/Art Unit:	2195
Inventor(s):	Syed Mohammad Amir Husain, Todd John Enright, Barry W. Thornton	Atty. Dkt. No:	5602-11900
Title:	DISTRIBUTED COMPUTING INFRASTRUCTURE INCLUDING AUTONOMOUS INTELLIGENT MANAGEMENT SYSTEM		

APPEAL BRIEF

Dear Sir or Madam:

Further to the Notice of Appeal filed on February 19, 2008, Appellants present this Appeal Brief. Appellants respectfully request that this appeal be considered by the Board of Patent Appeals and Interferences.

I. REAL PARTY IN INTEREST

The subject application is owned by ClearCube Technology, Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware, and having its principal place of business at 8834 Capitol of Texas Highway, Austin, TX 78759, as evidenced by the assignment recorded at Reel 014869, Frame 0752.

II. RELATED APPEALS AND INTERFERENCES

Related cases having application serial numbers 10/662,889 and 10/662,955 are also under appeal. There are no other related appeals or interferences known to Appellants, Appellants' legal representatives, or assignee which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-30 are pending. Claims 1-30 are rejected, and the rejection of these claims is being appealed. A copy of claims 1-30 is included in the Claims Appendix attached hereto.

IV. STATUS OF AMENDMENTS

An amendment to the specification submitted on January 18, 2008 has been entered. No amendments to the claims have been submitted subsequent to the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 is directed towards a method comprising entering user input to a source application on a first computer system (*see*, e.g., Fig. 1, reference characters 101, 105, 109; Fig. 22, reference characters 101A, 101B) to request performance of a task (*see*, e.g., page 6, lines 6-9; page 55, lines 12-17). The method also comprises generating a message in response to the user input (*see*, e.g., Fig. 23, reference character 2401; page 6, lines 6-9; page 55, lines 12-17). The message comprises one or more instructions which are computer-executable to perform the task (*see*, e.g., page 6, lines 10-11). The method further comprises storing the message in a message log (*see*, e.g., Fig. 23, reference character 2405; page 6, lines 16-17; page 55, lines 24-28). Additionally, the method comprises translating the message from an original format to a portable format on the first computer system to generate a portable message (*see*, e.g., Fig. 23, reference character 2403; page 6, lines 12-15; page 55, lines 18-23). The method also comprises retrieving the portable message from the message log (*see*, e.g., page 6, lines 16-18; page 55, lines 27-28). The method further comprises executing the one or more instructions to perform the task again (*see*, e.g., Fig. 23, reference character 2411; page 6, lines 16-18; page 55, lines 27-28; page 56, lines 14-21; page 60, lines 11-13) on one or more additional computer systems (*see*, e.g., Fig. 1, reference characters 101, 105, 109; Fig. 22, reference characters 101A, 101B).

Independent claim 11 is directed towards a computer-readable storage medium comprising program instructions (*see*, e.g., page 63, lines 1-6). The program instructions are computer-executable to implement receiving user input at a source application on a first computer system (*see*, e.g., Fig. 1, reference characters 101, 105, 109; Fig. 22, reference characters 101A, 101B) to request performance of a task (*see*, e.g., page 6, lines 6-9; page 55, lines 12-17). The program instructions are also computer-executable to implement generating a message in response to the user input (*see*, e.g., Fig. 23, reference character 2401; page 6, lines 6-9; page 55, lines 12-17). The message comprises one or more instructions which are computer-executable to perform the task (*see*, e.g., page 6, lines 10-11). The program instructions are further computer-executable to implement

storing the message in a message log (*see*, e.g., Fig. 23, reference character 2405; page 6, lines 16-17; page 55, lines 24-28). Additionally, the program instructions are computer-executable to implement translating the message from an original format to a portable format on the first computer system to generate a portable message (*see*, e.g., Fig. 23, reference character 2403; page 6, lines 12-15; page 55, lines 18-23). The program instructions are also computer-executable to implement retrieving the portable message from the message log (*see*, e.g., page 6, lines 16-18; page 55, lines 27-28). The program instructions are further computer-executable to implement executing the one or more instructions to perform the task again (*see*, e.g., Fig. 23, reference character 2411; page 6, lines 16-18; page 55, lines 27-28; page 56, lines 14-21; page 60, lines 11-13) on one or more additional computer systems (*see*, e.g., Fig. 1, reference characters 101, 105, 109; Fig. 22, reference characters 101A, 101B).

Independent claim 21 is directed towards a system comprising a first computer system comprising a first CPU and a first memory (*see*, e.g., Fig. 1, reference characters 101, 105, 109; Fig. 3, reference characters 304, 206; Fig. 22, reference characters 101A, 101B; page 15, line 21 to page 20, line 14). The system also comprises one or more additional computer systems comprising one or more respective additional CPUs and one or more respective additional memories (*see*, e.g., Fig. 1, reference characters 101, 105, 109; Fig. 3, reference characters 304, 206; Fig. 22, reference characters 101A, 101B; page 15, line 21 to page 20, line 14). The first computer system and the one or more additional computer systems are communicatively coupled via a network (*see*, e.g., Fig. 1, reference character 115; Fig. 3, reference character 305). The first memory stores program instructions (*see*, e.g., page 63, lines 1-6) which are executable by the first CPU to receive user input to a source application on the first computer system (*see*, e.g., Fig. 1, reference characters 101, 105, 109; Fig. 22, reference characters 101A, 101B) to request performance of a task (*see*, e.g., page 6, lines 6-9; page 55, lines 12-17). The program instructions are also executable by the first CPU to generate a message in response to the user input (*see*, e.g., Fig. 23, reference character 2401; page 6, lines 6-9; page 55, lines 12-17). The message comprises one or more instructions which are computer-executable to perform the task (*see*, e.g., page 6, lines 10-11). The program instructions are further

executable by the first CPU to store the message in a message log (*see*, e.g., Fig. 23, reference character 2405; page 6, lines 16-17; page 55, lines 24-28). Additionally, the program instructions are executable by the first CPU to translate the message from an original format to a portable format on the first computer system to generate a portable message (*see*, e.g., Fig. 23, reference character 2403; page 6, lines 12-15; page 55, lines 18-23). The program instructions are also executable by the first CPU to retrieve the portable message from the message log (*see*, e.g., page 6, lines 16-18; page 55, lines 27-28). The one or more additional memories store program instructions (*see*, e.g., page 63, lines 1-6) which are executable by the one or more respective additional CPUs to execute the one or more instructions to perform the task again (*see*, e.g., Fig. 23, reference character 2411; page 6, lines 16-18; page 55, lines 27-28; page 56, lines 14-21; page 60, lines 11-13) on the one or more additional computer systems (*see*, e.g., Fig. 1, reference characters 101, 105, 109; Fig. 22, reference characters 101A, 101B).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1, 2, 11, 12, 21, and 22 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 12, and 23 of copending application no. 10/662,889.

2. Claims 11-20 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

3. Claims 1-5, 8-15, 18-25, and 28-30 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Kenton, et al. (U.S. Patent No. 6,845,507, hereinafter "Kenton").

4. Claims 6, 7, 16, 17, 26, and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kenton in view of Pabla, et al. (U.S. Patent No. 7,127,613, hereinafter "Pabla").

VII. ARGUMENT

First Ground of Rejection:

Claims 1, 2, 11, 12, 21, and 22 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 12, and 23 of copending application no. 10/662,889. A rejection based on a nonstatutory type of double patenting can be avoided by filing a terminal disclaimer in the application or proceeding in which the rejection is made. *In re Vogel,* 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Knohl*, 386 F.2d 476, 155 USPQ 586 (CCPA 1967); and *In re Griswold*, 365 F.2d 834, 150 USPQ 804 (CCPA 1966). Appellants filed such a terminal disclaimer on January 18, 2008. Accordingly, Appellants have obviated the obviousness-type double patenting rejection.

Second Ground of Rejection:

Claims 11-20 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Appellants traverse this rejection for the following reasons. Claims 11-20 currently recite, in pertinent part, a "computer-readable storage medium." The Examiner argues that Appellants' specification defines a computer-readable storage medium to encompass an electronic transmission signal. In the paragraph originally located on page 63, lines 1-6 of Appellants' original specification, Appellants' amended specification states:

> Various embodiments may further include receiving or storing instructions and/or information implemented in accordance with the foregoing description upon a carrier medium. Suitable carrier media may include storage media or memory media such as magnetic or optical media, e.g., disk or CD-ROM. Suitable carrier media may also include transmission media or signals such as electrical, electromagnetic, or digital signals, conveyed via a communication medium such as a network and/or a wireless link.

Appellants' amended specification thus discloses that suitable carrier media may include storage media or memory media such as magnetic or optical media. Appellants' amended specification also discloses that suitable carrier media may include transmission media or signals such as electrical, electromagnetic, or digital signals. However, Appellants' amended specification does not state that storage media or memory media may include transmission media or signals. Claims 11-20 currently recite, in pertinent part, a "computer-readable storage medium" and not a "carrier medium." Therefore, claims 11-20 are limited to patentable subject matter.

Third Ground of Rejection:

Claims 1-5, 8-15, 18-25, and 28-30 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Kenton, et al. (U.S. Patent No. 6,845,507, hereinafter "Kenton"). Appellants traverse this rejection for the following reasons. Different groups of claims are addressed under their respective subheadings.

Claims 1-4, 8, 10-14, 18, 20-24, 28, and 30:

Anticipation requires the presence of each and every limitation of the claimed invention, arranged as in the claim, in a single prior art reference. M.P.E.P 2131; *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As discussed below, Kenton fails to disclose each and every element of claim 1.

In particular, Appellants respectfully submit that Kenton does not teach or suggest a method comprising "generating a message in response to the user input [to request performance of a task], wherein the message comprises one or more instructions which are computer-executable to perform the task" and "executing the one or more instructions

to perform the task again on one or more additional computer systems" in combination with the remaining features of claim 1.

Kenton discloses a system for workflow automation in which workflow instructions are accessed from messages passed from one application to another (see, e.g., col. 3, line 47 to col. 4, line 2). Figs. 2 and 3 illustrate examples of workflows including various workflow tasks. Kenton also discloses that different tasks in a workflow may be performed respectively on different computer systems (see, e.g., Fig. 2). However, as shown below, Kenton does not teach or suggest that the same task is performed on both a first computer system and on one or more additional computer systems (i.e., on at least two different computer systems).

In arguing that Kenton discloses "entering user input to a source application on a first computer system to request performance of a task," the Examiner cites Kenton at col. 4, lines 38-41, where Kenton states that a Trade Management Application (TMA) purchases shares of stock and allocates the shares to client portfolios. Thus, the Examiner argues that the requested task in Kenton is the purchase and/or allocation of stock shares using the TMA. However, in arguing that Kenton discloses "executing the one or more instructions to perform the task again on one or more additional computer systems," the Examiner cites Kenton at col. 6, lines 14-19, where Kenton discloses updating a Portfolio Management Application (PMA) database to reflect the stock allocation. Although the TMA and the PMA may be located on different computers, the TMA operation is a financial transaction while the PMA operation is a database transaction. The stock purchase/allocation and the database update are different tasks. Therefore, Kenton does not teach or suggest a method comprising "generating a message in response to the user input, wherein the message comprises one or more instructions which are computer-executable to perform the task" and "executing the one or more instructions to perform the task again on one or more additional computer systems" in combination with the remaining features of claim 1.

Accordingly, claim 1 and its dependent claims 2-4, 8, and 10 are believed to patentably distinguish over Kenton for at least the reasons given above. Claims 11 and 21 recite features similar to those of claim 1 and, along with their dependent claims 12-14, 18, 20, 22-24, 28, and 30, are believed to patentably distinguish over Kenton for at least the same reasons.

Claims 5, 15, and 25:

Anticipation requires the presence of each and every limitation of the claimed invention, arranged as in the claim, in a single prior art reference. M.P.E.P 2131; *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As discussed below, Kenton fails to disclose each and every element of claim 5 in combination with the remaining features of the base claim 1 and intervening claim 4.

Claim 5 is dependent on claim 1 and is patentably distinct from Kenton for at least the reasons discussed above regarding claim 1. Furthermore, Appellants respectfully submit that Kenton does not teach or suggest a method comprising "routing the portable message to a target application on the second computer system based on metadata which comprise identifying characteristics of the source application" as recited in claim 5, in combination with the remaining features of the base claim 1 and intervening claim 4. The Final Office Action argues that this limitation is taught by Kenton in col. 7, lines 55-58. Appellants respectfully disagree. In the cited passage, Kenton discloses that a workflow message contains hierarchical data including a <Stage> tag that encloses a list of data needed for a task. Kenton further describes the tagged data as "data needed by the steps that a particular application must execute to fulfill its role in the process." However, there is no teaching or suggestion in Kenton that metadata or any element of the message identifies the source application or otherwise comprises identifying characteristics of the source application.

Accordingly, claim 5 is believed to patentably distinguish over Kenton for at least the reasons given above. Claims 15 and 25 recite features similar to those of claim 5 and are believed to patentably distinguish over Kenton for at least the same reasons.

Claims 9, 19, and 29:

Anticipation requires the presence of each and every limitation of the claimed invention, arranged as in the claim, in a single prior art reference. M.P.E.P 2131; *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As discussed below, Kenton fails to disclose each and every element of claim 9 in combination with the remaining features of the base claim 1 and intervening claims 4 and 5.

Claim 9 is dependent on claims 1 and 5 and is patentably distinct from Kenton for at least the reasons discussed above regarding claims 1 and 5. Furthermore, Appellants respectfully submit that Kenton does not teach or suggest a method comprising "sorting the message log by one or more elements of the metadata" as recited in claim 9, in combination with the remaining features of the base claim 1 and intervening claims 4 and 5. Again, the Final Office Action argues that this limitation is taught by Kenton in col. 7, lines 55-58. Kenton discloses in the cited passage that a workflow message contains hierarchical data including a <Stage> tag that encloses a list of data needed for a task. However, there is no teaching or suggestion in Kenton that any items of data are sorted by metadata, nor that a message log is sorted by one or more elements of the metadata. Furthermore, Kenton does not teach or suggest sorting the message log by one or more elements of the metadata which comprise identifying characteristics of the source application as recited in intervening claim 5.

Accordingly, claim 9 is believed to patentably distinguish over Kenton for at least the reasons given above. Claims 19 and 29 recite features similar to those of claim 5 and are believed to patentably distinguish over Kenton for at least the same reasons.

Fourth Ground of Rejection:

Claims 6, 7, 16, 17, 26, and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kenton in view of Pabla, et al. (U.S. Patent No. 7,127,613, hereinafter "Pabla"). Appellants traverse this rejection for the following reasons.

To establish a *prima facie* case of obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP 2143.03. For at least the reasons discussed above with respect to claim 1, Appellants respectfully submit that Kenton and Pabla, taken individually or in combination, would not produce all the limitations recited in claim 6 in combination with the base claim 1 and intervening claim 4.

Furthermore, Appellants respectfully submit that it would not have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kenton in the manner suggested by the Examiner to produce the limitations of claim 6 in combination with the base claim 1 and intervening claim 4. In particular, Appellants respectfully submit that there is no suggestion or reason to combine the teachings of Kenton and Pabla. In rejecting claim 4, the Examiner cites Fig. 4 of Kenton as teaching peer-to-peer message passing. Fig. 4 of Kenton discloses that a message sender (e.g., XeAnt 404, XeTrade 408, etc.) may place a message in a particular queue at a particular stage of a workflow. Fig. 4 of Kenton also discloses that a message recipient may read one of the messages from a particular queue at a particular stage in the workflow. Each message is passed between a single sender and a single recipient using a particular queue. Appellants see no evidence of a suggestion or reason to introduce broadcast peer-to-peer message passing into the single-sender-to-single-recipient message-passing architecture disclosed by Kenton.

Accordingly, Appellants respectfully submit that claim 6 is patentably distinct from the cited references. For similar reasons, claims 7, 16, 17, 26, and 27 are also believed to patentably distinguish over the cited references.

For the foregoing reasons, it is submitted that the Examiner's rejection of claims 1-30 was erroneous, and reversal of the decision is respectfully requested.

The fee of $255.00 for filing this Appeal Brief is being paid concurrently via EFS-Web. If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above-referenced application(s) from becoming abandoned, Appellant(s) hereby petition for such extensions. The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Meyertons, Hood, Kivlin, Kowert & Goetzel P.C., Deposit Account No. 50-1505/5602-11900/JCH.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

The claims on appeal are as follows.

1. A method comprising:

entering user input to a source application on a first computer system to request performance of a task;

generating a message in response to the user input, wherein the message comprises one or more instructions which are computer-executable to perform the task;

storing the message in a message log;

translating the message from an original format to a portable format on the first computer system, wherein translating the message from the original format to the portable format comprises generating a portable message;

retrieving the portable message from the message log; and

executing the one or more instructions to perform the task again on one or more additional computer systems.

2. The method of claim 1, further comprising:

performing the task on the first computer system in response to the user input.

3. The method of claim 1,

wherein the portable format comprises XML, and the portable message comprises an XML message.

4. The method of claim 1, further comprising:

sending the portable message from the first computer system to a second computer system using peer-to-peer message passing between the first computer system, the second computer system, and optionally one or more intermediary computer systems; and

performing the requested task on the second computer system.

5. The method of claim 4, further comprising:

routing the portable message to a target application on the second computer system based on metadata which comprise identifying characteristics of the source application.

6. The method of claim 4,

wherein the peer-to-peer message passing comprises broadcast peer-to-peer message passing.

7. The method of claim 4,

wherein the peer-to-peer message passing comprises multicast peer-to-peer message passing.

8. The method of claim 1,

wherein the message log comprises a queue.

9. The method of claim 5, further comprising:

sorting the message log by one or more elements of the metadata.

10. The method of claim 1,

wherein the message is generated through a distributed computing infrastructure.

11. A computer-readable storage medium comprising program instructions, wherein the program instructions are computer-executable to implement:

receiving user input at a source application on a first computer system to request performance of a task;

generating a message in response to the user input, wherein the message comprises one or more instructions which are computer-executable to perform the task;

storing the message in a message log;

translating the message from an original format to a portable format on the first computer system, wherein translating the message from the original format to the portable format comprises generating a portable message;

retrieving the portable message from the message log; and

executing the one or more instructions to perform the task again on one or more additional computer systems.

12. The computer-readable storage medium of claim 11, wherein the program instructions are further computer-executable to implement:

performing the task on the first computer system in response to the user input.

13. The computer-readable storage medium of claim 11,

wherein the portable format comprises XML, and the portable message comprises an XML message.

14. The computer-readable storage medium of claim 11, wherein the program instructions are further computer-executable to implement:

sending the portable message from the first computer system to a second computer system using peer-to-peer message passing between the first computer system, the second computer system, and optionally one or more intermediary computer systems; and

performing the requested task on the second computer system.

15. The computer-readable storage medium of claim 14, wherein the program instructions are further computer-executable to implement:

routing the portable message to a target application on the second computer system based on metadata which comprise identifying characteristics of the source application.

16. The computer-readable storage medium of claim 14,

wherein the peer-to-peer message passing comprises broadcast peer-to-peer message passing.

17. The computer-readable storage medium of claim 14,

wherein the peer-to-peer message passing comprises multicast peer-to-peer message passing.

18. The computer-readable storage medium of claim 11,

wherein the message log comprises a queue.

19. The computer-readable storage medium of claim 15, wherein the program instructions are further computer-executable to implement:

sorting the message log by one or more elements of the metadata.

20. The computer-readable storage medium of claim 11,

wherein the message is generated through a distributed computing infrastructure.

21. A system comprising:

a first computer system comprising a first CPU and a first memory; and

one or more additional computer systems comprising one or more respective additional CPUs and one or more respective additional memories;

wherein the first computer system and the one or more additional computer systems are communicatively coupled via a network;

wherein the first memory stores program instructions which are executable by the first CPU to:

receive user input to a source application on the first computer system to request performance of a task;

generate a message in response to the user input, wherein the message comprises one or more instructions which are computer-executable to perform the task;

store the message in a message log;

translate the message from an original format to a portable format on the first computer system, wherein translating the message from the original format to the portable format comprises generating a portable message;

retrieve the portable message from the message log; and

wherein the one or more additional memories store program instructions which are executable by the one or more respective additional CPUs to:

execute the one or more instructions to perform the task again on the one or more additional computer systems.

22. The system of claim 21, wherein the program instructions are further executable by the first CPU to:

perform the task in response to the user input.

23. The system of claim 21,

wherein the portable format comprises XML, and the portable message comprises an XML message.

24. The system of claim 21, wherein the program instructions are further executable by the first CPU to:

send the portable message from the first computer system to a second computer system using peer-to-peer message passing between the first computer system, the second computer system, and optionally one or more intermediary computer systems; and

wherein the second computer system is operable to perform the requested task.

25. The system of claim 24,

wherein the second computer system is operable to route the portable message to a target application on the second computer system based on metadata which comprise identifying characteristics of the source application.

26. The system of claim 24,

wherein the peer-to-peer message passing comprises broadcast peer-to-peer message passing.

27. The system of claim 24,

wherein the peer-to-peer message passing comprises multicast peer-to-peer message passing.

28. The system of claim 21,

wherein the message log comprises a queue.

29. The system of claim 25, wherein the program instructions are further executable by the first CPU to:

sort the message log by one or more elements of the metadata.

30. The system of claim 21,

wherein the message is generated through a distributed computing infrastructure.

IX. EVIDENCE APPENDIX

No evidence submitted under 37 CFR §§ 1.130, 1.131, or 1.132 or otherwise entered by the Examiner is relied upon in this appeal.

X. RELATED PROCEEDINGS APPENDIX

There are no decisions rendered by a court or the Board in any related proceedings known to Appellants, Appellants' legal representatives, or assignee which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.